

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 14-971V

Filed: October 5, 2015

Unpublished

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FRANCES KESKE,

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Petitioner,

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Attorneys' Fees and Costs; Stipulation;  
Special Processing Unit ("SPU")

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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Respondent.

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*Anne Toale, Maglio Christopher and Toale, PA, Sarasota, FL, for petitioner.  
Linda Renzi, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION ON ATTORNEYS' FEES AND COSTS<sup>1</sup>**

**Dorsey**, Chief Special Master:

On October 9, 2014, Frances Keske filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> [the "Vaccine Act" or "Program"]. Petitioner alleged that as the result of an influenza ["flu"] vaccination on October 15, 2012, she suffered arm pain. Petition, ¶¶ 2-3. On July 29, 2015, a decision issued awarding compensation to petitioner based on the parties' Stipulation.

On October 2, 2015, the parties filed a Stipulation of Facts Concerning Attorneys' Fees and Costs. According to the stipulation, the parties agree upon an award of \$20,280.22. In accordance with General Order #9, petitioner's counsel represents that petitioner personally incurred \$184.88 in out-of-pocket expenses.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

The Vaccine Act permits an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300 aa-15(e). I find the proposed amount to be reasonable.

Accordingly, an award should be made as follows:

- 1. \$20,095.34 in the form of a check jointly payable to petitioner and petitioner's counsel, Anne Carrion Toale, Esq; and**
- 2. \$184.88 in the form of a check solely payable to petitioner.<sup>3</sup>**

The clerk of the court shall enter judgment in accordance herewith.<sup>4</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
**Nora Beth Dorsey**  
Chief Special Master

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<sup>3</sup> This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See *generally Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir.1991).

<sup>4</sup> Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).